

ORDER NO. 2460

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton;  
Ruth Y. Goldway; and  
Nanci E. Langley

Complaint of Center for Art and Mindfulness, Inc.  
and Norton Hazel

Docket No. C2015-1

ORDER DENYING RECONSIDERATION OF  
COMMISSION ORDER NO. 2377

(Issued April 23, 2015)

On April 1, 2015, the Center for Art and Mindfulness, Inc. and Norton Hazel (collectively Complainants) filed a motion for reconsideration of Commission Order No. 2377, issued March 4, 2015.<sup>1</sup>

I. BACKGROUND

The factual background prior to this decision is set forth in Order No. 2377.<sup>2</sup> In summary, Complainants filed a complaint asserting claims concerning the sale and

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<sup>1</sup> Brief in Support of Motion for Reconsideration of Commission Order of Center for Art and Mindfulness, Inc. and Norton Hazel, April 1, 2015 (Motion for Reconsideration).

<sup>2</sup> Order Granting Motion to Dismiss, March 4, 2015 (Order No. 2377).

closure of the Atlantic Street Station post office in Stamford, Connecticut. The Commission found, as a threshold issue, that it lacked subject matter jurisdiction to consider the claims set forth in the complaint. Order No. 2377 at 2. The Commission dismissed the complaint on the grounds that it failed to meet the statutory requirements of 39 U.S.C. § 3662(a). *Id.* at 5-7.

*Complainants' Motion for Reconsideration.* Complainants assert that reconsideration is required where the Commission failed to apply precedent concerning the leasing of property by the Postal Service and made a factual error regarding the disposition of Complainants' claims before the Federal District Court of Connecticut. Motion for Reconsideration at 4-5. In addition, Complainants state that the Commission failed to discuss all of the jurisdictional arguments made in their amended complaint. *Id.* at 9-12. Complainants contend that the Commission has jurisdiction to hear claims relating to the discrimination and undue preference, breach of contract, conflict of interest, and violation of Postal Service policies concerning the sale of the Atlantic Street Station property. *Id.* at 5-11. Complainants do not request reconsideration of the dismissal of their claim relating to the closure of the Atlantic Street Station post office. *Id.* at 12.

*Postal Service's answer in opposition.* In its opposition, the Postal Service contends that the Motion for Reconsideration should be dismissed where the Commission "considered Complainants' arguments and correctly applied past precedent when dismissing the Complaint."<sup>3</sup> The Postal Service provides a point-by-point refutation of the arguments made by Complainants, stating that there were no factual errors in the Commission's decision, no prior precedent misapplied, and that the Commission correctly dismissed the complaint. *Id.* at 4-18.

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<sup>3</sup> United States Postal Service Answer in Opposition to Complainants' Motion for Reconsideration, April 8, 2015, at 1 (Opposition).

## II. COMMISSION ANALYSIS

As set forth in Order No. 2377, the Commission has limited jurisdiction to hear rate and service complaints as prescribed by 39 U.S.C. § 3662(a). Although the complaint set forth five separate claims relating to the sale and closure of the Atlantic Street Station property, Order No. 2377 found that none of the claims satisfied the jurisdictional requirements under 39 U.S.C. § 3662(a).

In consideration of the claims set forth by Complainants' complaint, amended, and current Motion for Reconsideration, the Commission concludes that none of the asserted grounds for reconsideration have merit. Complainants' Motion for Reconsideration is a re-argument of facts and theories on which the Commission has already ruled. Therefore, the Commission will only address the Complainants' arguments that the Commission failed to apply "PRC and Third Circuit precedent that hold that the leasing of property is a non-postal service subject to its jurisdiction, contrary to the position taken in its Order No. 2377" and that the Order had "factual errors about the status and posture of the claims in the case before the Federal Court." Motion for Reconsideration at 4-5.

Order No. 2377 did not opine on jurisdiction under 39 U.S.C. § 3662(a) relating to the leasing of property by the Postal Service as that issue was not raised or relevant to the claims before the Commission. Rather, Order No. 2377 applied established and clear precedent regarding claims relating to the sale of real property in dismissing the complaint. Complainants read an implication into the Commission's statement regarding the ultimate disposition of the claims dismissed by the Federal District Court of Connecticut. The Commission's recitation of that disposition by the Federal District Court took no position on the merits of those claims or the basis for their dismissal, and clearly stated that the claims before the Federal District Court had no bearing on the Commission's decision. Order No. 2377 at 3, n.6.

Complainants' Motion for Reconsideration provides no basis for the Commission to alter its prior conclusion that the Commission does not have jurisdiction under 39 U.S.C. § 3662 to hear claims relating to the Postal Service's sale of the Atlantic

Street Station property. Therefore, the Complainants' Motion for Reconsideration is denied.

*It is ordered:*

The Motion for Reconsideration by the Center for Art and Mindfulness, Inc. and Norton Hazel is denied.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

Commissioner Goldway dissenting.

## DISSENTING OPINION OF COMMISSIONER GOLDWAY

I dissent from this opinion because I believe a reasonable interpretation of the law gives the Commission jurisdiction to consider the well-being of the communities and the general public who submit complaints of discrimination or poor service, or appeals of post office closings.

The Commission's decision is unduly myopic. The Commission should do all it can in such cases to support communities' interests in their historic central post offices, and to ensure that the public art and architecture, paid for by taxpayers, which the Postal Service inherited from the Postal Service Department in 1970, should be preserved and accessible to all for the foreseeable future. The Postal Service and the Commission must recognize the public's stake as an essential third party beneficiary in all such proceedings. In general, in recent years, the Commission has chosen to narrowly interpret our authority to review complaints.

The Postal Service's current policy of disposing of historical central post offices, many in key downtown locations, without fully exploring the potential for dual- or multi-use or cooperative development, is economically short-sighted. This failure of vision is bad business for both the Postal Service and for the American communities it serves.

Further, the Postal Service's recent record of selling off its historic buildings is blemished by its inability to protect the public's right of access to great works of civic art and architecture. Post Offices that have been transferred to private ownership are locked. Public artwork that is part of the fabric of our nation has been removed or is now inaccessible to the public. My home town of Venice, California is only one example of how access to iconic civic assets is being lost.

Ruth Y. Goldway